

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

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KEVIN CAMPBELL,

Docket No.:
22 CV 7662

Plaintiff,

-against-

**SECOND DECLARATION
OF JESSICA MASSIMI**

FEDERAL EXPRESS CORPORATION,
FEDEX EXPRESS, and ERIC WANDERS,
INDIVIDUALLY,

Defendants.

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I, Jessica Massimi, attorney for the Plaintiff, Kevin Campbell, declare under penalty of perjury that the foregoing is true and correct.

I am an attorney admitted to practice law in this court. I submit this declaration in further support of Plaintiff's Motion for Summary Judgment and in Opposition to Defendants' Motion for Summary Judgment.

1. Attached hereto as Exhibit 39 is Plaintiff's Proposed Briefing Regarding Defendants' Request to Strike Plaintiff's 56.1 Statement, requested only in their 56.1 Response, which Defendants omit from their memorandum of law.
2. Plaintiff does not currently possess enough pages to respond to Defendants' improperly made arguments contained outside of their MOL, nor to raise similar arguments of his own regarding Defendants' improper 56.1 practice, given that only Plaintiff was limited to 15 pages for a combined reply and opposition.
3. As such, Plaintiff respectfully requests that the Court consider the brief case law and legal argument contained in Exhibit 39.
4. Additionally, attached hereto as Exhibit 40 is a chart highlighting where Defendants have admitted Plaintiff's factual assertions by (1) failing to respond, (2) denying without citation, and (3) objecting without disputing. Plaintiff has also indicates where Defendants (4) incorrectly claim paragraphs are not supported by citation or lack context, (5) frivolously assert immateriality, (6) & (7) make legal arguments, and (8) baselessly blame Mr. Alzate's deposition translator.
5. Finally, on November 18, 2024, Defendants served "Defendants' Memorandum In Support of Motion for Summary Judgment." The Court's July 24, 2024 Order, however, directed that Defendants serve their "opposition" along with their motion.

6. In their November 18, 2024 memorandum, Defendants fail to oppose several key points raised by Plaintiff in his memorandum of law, such as the fact that (1) Peter Lorenzi who is not Black was treated more favorably after engaging in the same policy violation for which Plaintiff was ultimately (wrongly) terminated, (2) Defendants' videos are inadmissible, (3) Jose Moreno's statements are inadmissible, and (4) Defendants never raised an affirmative defense of "petty sleights and trivial inconveniences."
7. To the extent the Defendants attempt to raise any argument for the first time in their reply, including opposition to the points they failed to address in their opposition to Plaintiff's motion, Plaintiff respectfully reserves the right to seek leave to file further briefing on any newly made arguments from Defendants.
8. Plaintiff thanks the Court for its time and consideration.

Dated: New York, New York
January 6, 2025

Respectfully submitted,

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